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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

PEOPLE EX REL., DEPARTMENT OF TRANSPORTATION, Plaintiff and Respondent, v. BALBIR SOHAL, Defendant and Appellant; DARREL AND JANE SMITH FAMILY PARTNERSHIP, Defendant and Respondent.	C063301 (Super. Ct. No. CVCS071309)

A roadway improvement project for Highway 99 in Sutter County required condemnation of a 70-acre prune orchard leased by appellant Balbir Sohal from respondent Darrel and Jane Smith Family Partnership (the Partnership). Sohal expected to harvest 10 more annual crops during the remainder of a lease that was cut short when the prune orchard was condemned by respondent,

the State of California, acting by and through the Department of Transportation (the Department). Although the Department's right to condemn the property was uncontested, the parties proceeded to trial due to their inability to agree on valuation.

Sohal appeals from a directed verdict awarding him $93,000 as his total compensation for his leasehold interest. He contends his interest was worth more than a million dollars because he expected to reap 10 more years of harvests. He argues that his receipt only of the "bonus rent" arising from the favorable rent specified in his lease fails to adequately compensate him.

We shall affirm the trial court's judgment.

FACTUAL AND PROCEDURAL HISTORY

Condemnation

In July 2007, the Department initiated condemnation proceedings for the entirety of the property on which the prune orchard stood. December 2007 served as the date for valuation of the property.

Valuation

In July 1992, Sohal and the Partnership entered into a 25-year lease of 70 acres of rice fields. Sohal leveled the fields, installed irrigation, and planted prune trees. In 2007, Sohal's orchard was fully mature and productive. At the time of the taking, Sohal expected to harvest another 10 crops under terms of the lease.

The only witness to testify regarding valuation of interests in the property was the Partnership's expert, Richard

Stover. Stover had 40 years' experience as a real estate appraiser. He reviewed the lease for the condemned property and determined that it was quite favorable to Sohal. Although most leases require the lessee-farmer to pay a quarter of the crop's gross value to the landowner, Sohal's lease specified rent in the lesser amount of (1) an eighth of each crop's gross, or (2) $11,900 per year as base rent plus an adjustment based on the consumer price index. Sohal secured the favorable rent terms on account of his initial investment in the orchard.

Stover testified that the present value of Sohal's advantageous rent term for the 10 years remaining on the lease amounted to $93,000. Because the property as a whole was worth $700,000, the Partnership was entitled to the remaining $603,000 as compensation for the taking.

On cross-examination, Sohal's counsel questioned Stover whether his opinion of the property value was affected by exhibits 26 and 27. Sohal introduced exhibits 26 and 27 into evidence to show calculations by Richland Enterprises LLC, which concluded that $1,193,055 constituted the "present value of this cash flow stream [from prune farming] at 6% interest for the next ten years." Stover testified that Sohal's ability to produce income from future crop harvests did not factor into the value of Sohal's *interest in the real property*. Instead, crop income factored only into the value of Sohal's *interest in his prune-farming business.*

Sohal did not call an expert witness to testify about valuation of his interest in the real property or his interest

in the prune-farming business. Instead, the only testimony he offered was his own.

Sohal testified that he entered into the lease with the expectation of recouping his initial investment over the 25-year term of the lease. He accepted the $93,000 valuation of Stover for the value of the lease but sought additional compensation from the Department for his lost cash flow for the years remaining on the lease.

Directed Verdict

At the close of evidence, the Department and the Partnership moved for a directed verdict based on Stover's uncontradicted valuation testimony. Sohal also moved for a directed verdict based on his argument that his "cash flow stream" was established by exhibits 26 and 27. The trial court responded by noting: "Well, first of all, this Exhibit 27 and 26, may be all well and good that it shows information, but it never caused the expert to change his opinion."

The trial court granted the Department's and Partnership's motions for directed verdict. However, the court denied Sohal's motion, explaining: "The only way that those numbers could have been changed is if – based on Exhibits 27 and 2[6], is if the expert, given the way the case went, is if the expert had looked at those and said, you know, I'm right, I'm going to change my value of leasehold interest or some other interest based on those figures, and he never did. [¶] And there's no – and the

Aetna[1] case somewhere tells us that jurors are not appraisers and they can't try to figure this stuff out on their own. They have to rely upon the opinions of the expert. And the only opinions that we have are the ones that Mr. Stover opined. And that was the – and using those figures I reached my ruling on the motion for directed verdict . . . ."

The court entered a judgment requiring the Department to pay compensation in the amount $700,000 for the entirety of the condemned property. Of this amount, the court awarded $607,000 to the Partnership and $93,000 to Sohal.

Sohal has timely filed a notice of appeal.

DISCUSSION

I

Compensation for a Lessee's Interest in Condemned Real Property

Sohal contends the trial court erroneously granted the Department's and Partnership's motions for a directed verdict awarding him $93,000 as the bonus value to which he was entitled as lessee of the condemned property. He also argues that the trial court erred in denying his motion for a directed verdict fixing his compensation at $1,193,055 to reflect his loss of 10 future prune crops. We reject the contentions.

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1 *Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865 (*Aetna*).

A

The Code of Civil Procedure authorizes trial courts to enter directed verdicts at the close of evidence. To this end, section 630[2] provides that "after all parties have completed the presentation of all of their evidence in a trial by jury, any party may, without waiving his or her right to trial by jury in the event the motion is not granted, move for an order directing entry of a verdict in its favor."

A trial court properly grants a motion for directed verdict when the evidence supports only one conclusion. "A directed verdict is proper only when, after disregarding conflicting evidence and giving the opposing party's evidence every legitimate inference which may be drawn therefrom, there remains no evidence of sufficient substantiality to support a verdict in favor of the opposing party. (*Paulfrey v. Blue Chip Stamps* (1983) 150 Cal.App.3d 187, 196 [].) Unless it can be said as a matter of law that no other reasonable conclusion is legally deducible from the evidence and that any other holding would be so lacking in evidentiary support that a reviewing court would be compelled to reverse on appeal, or a trial court to set it aside, the trial court is not justified in taking the issue from the jury. (*Id.* at pp. 196-197.)" (*Aetna, supra,* 170 Cal.App.3d at p. 876.)

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[2] Undesignated statutory references are to the Code of Civil Procedure.

B

In *United States v. Miller* (1943) 317 U.S. 369 [87 L.Ed. 336] (*Miller*), the Supreme Court articulated the basic principle underlying compensation for governmental takings: "The Fifth Amendment of the Constitution provides that private property shall not be taken for public use without just compensation. Such compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken." (*Id.* at p. 373 [at p. 342], fns. omitted.)

A governmental taking of real property terminates any lease to which a condemned property is subject. (§ 1265.110.) Thus, condemnation of a leased property requires payment of just compensation to the lessee for the value of any lost interest in the property. The value of a lessee's interest in a property has been designated the "bonus value" of the lease. "The bonus value can be . . . defined as the present value of the difference between economic rent, i.e., the value of market rental, and the contract rent through the remaining lease term." (*New Haven Unified School Dist. v. Taco Bell Corp.* (1994) 24 Cal.App.4th 1473, 1478-1479 (*New Haven*).)

As the *New Haven* court explained, "The bonus value usually assumes importance only in long-term commercial leases. Condemnation of the leased premises serves to terminate a lease, releasing the lessee from further obligation to pay rental; thus, the value of the lost possession must be offset by the

value of the cancelled rental obligation. In short-term leases, the lessee will have at best a small claim against the condemning authority. In long-term leases, which typically involve commercial properties, the lessee may still have no claim if the lease rental equals or exceeds the market rental." (*New Haven*, *supra*, 24 Cal.App.4th at p. 1479.)

To the extent a lessee is entitled to bonus value arising from a favorable lease, the lessor's share of compensation for the taking of the property is diminished. "Whether or not the lessor and lessee are joined in a single proceeding . . . , these rules will ordinarily result in an aggregate award to both lessor and lessee equal to market value of the property." (*New Haven*, *supra*, 24 Cal.App.4th at p. 1479.)

When a lessor and lessee both assert claims for compensation deriving from the same condemned real property, the Code of Civil Procedure specifies that the question of valuation for the entirety of the property and the shares to which each lessor and lessee is entitled should be determined in the same proceeding. In pertinent part, section 1260.220 specifies:

"(a) Except as provided in subdivision (b), where there are divided interests in property acquired by eminent domain, the value of each interest and the injury, if any, to the remainder of such interest shall be separately assessed and compensation awarded therefore.

"(b) The plaintiff may require that the amount of compensation be first determined as between plaintiff and all defendants claiming an interest in the property. Thereafter, in

the same proceeding, the trier of fact shall determine the respective rights of the defendants in and to the amount of compensation awarded and shall apportion the award accordingly. Nothing in this subdivision limits the right of a defendant to present during the first stage of the proceeding evidence of the value of, or injury to, the property or the defendant's interest in the property; and the right of a defendant to present evidence during the second stage of the proceeding is not affected by the failure to exercise the right to present evidence during the first stage of the proceeding."

Here, Stover testified that the value of the entire 70.2 acre property containing Sohal's prune orchard was worth a total of $700,000. Stover then compared Sohal's lease with similar agricultural leases and concluded that Sohal enjoyed favorable rent conditions. Consequently, Stover determined that Sohal was entitled to $93,000 as the bonus value of his leasehold interest in the real property owned by the Partnership. On the witness stand, Sohal accepted the $93,000 figure as the correct measure of his leasehold interest. Accordingly, the trial court properly granted the Department's and Partnership's motions for directed verdict on the uncontested testimony of the valuation expert that Sohal's interest *in the property* was worth $93,000.

C

On appeal, Sohal does not challenge the $93,000 valuation of the advantage given to him under the terms of the lease. Instead, he argues that he was entitled to additional compensation to reflect the lost cash he would receive from the

10 prune crops he expected to harvest during the remainder of the lease. We reject the contention.

Nothing in the United States or California Constitutions requires compensation for the loss of business goodwill due to a diminution of profits caused by a governmental taking. "Compensation for goodwill is not constitutionally required, and historically it was not an element of damages under California's eminent domain law. (*City of San Diego v. Sobke* (1998) 65 Cal.App.4th 379, 387 [].) In 1975, however, the Legislature enacted a comprehensive revision of eminent domain law '"in response to a widespread criticism of the injustice wrought by the Legislature's historic refusal to compensate condemnees whose ongoing businesses were diminished in value by a forced relocation. [Citations.] The purpose of the statute was unquestionably to provide monetary compensation for the kind of losses which typically occur when an ongoing small business is forced to move and give up the benefits of its former location."' (*Id.* at p. 388, quoting *People ex rel. Dept. of Transportation v. Muller* [1984)] 36 Cal.3d [263], 270.)" (*Redevelopment Agency of City of San Diego v. Attisha* (2005) 128 Cal.App.4th 357, 367, fn. 4 (*Attisha*).)

A business owner who seeks compensation due to lost profits caused by a governmental taking bears the burden of showing entitlement to such compensation. (§ 1263.510.)[3] "The business

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[3] In pertinent part, section 1263.510 provides:

owner has the initial burden of showing entitlement to compensation for lost goodwill. This entails proof the condemnation caused the loss, the loss cannot reasonably be prevented by relocating the business or otherwise mitigating damages, and compensation for the loss will not be included in relocation benefits allowed under Government Code section 7262 or otherwise duplicated in the condemnation award." (*Attisha, supra,* 128 Cal.App.4th at p. 367.)

Sohal did not attempt to prove the elements required to establish entitlement to compensation for lost goodwill. He did not testify as to the value he believed his prune-growing business was worth. He acknowledged only that he sent a letter containing an analysis of the business's expected cash flows to the Department several months prior to trial. Sohal failed to call any other witness at trial.

"(a) The owner of a business conducted on the property taken, or on the remainder if the property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following: [¶] (1) The loss is caused by the taking of the property or the injury to the remainder. [¶] (2) The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill. [¶] (3) Compensation for the loss will not be included in payments under Section 7262 of the Government Code. [¶] (4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

"(b) Within the meaning of this article, 'goodwill' consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage."

We reject Sohal's attempt to establish the value of the lost profits due to prune farming on the basis of exhibits 26 and 27. Sohal failed to meet his burden of proof for lack of expert testimony as to his lost profits. Mere cross-examination of the Partnership's expert with exhibits 26 and 27 did not constitute the sort of proof required to establish valuation of business goodwill.

In *Aetna*, the Court of Appeal rejected a claim that cross-examination of the opposing party's expert witness and the property owners could succeed in proving the value of the property at issue. (*Aetna*, *supra*, 170 Cal.App.3d at p. 876.) The *Aetna* court affirmed the trial court's directed verdict because "[a]ny deviation from the evidence by the jury would have been improper." (*Id.* at p. 878.) In so holding, *Aetna* explains that "[t]he only type of evidence which can be used to establish value in eminent domain cases is the opinion of qualified experts and the property owners." (*Id.* at p. 877.)

Here, the court heard testimony by only one expert witness, who rejected the relevance of exhibits 26 and 27. Moreover, the court sustained an objection to Sohal giving valuation testimony.[4] No expert testified that the calculations contained in exhibits 26 and 27 would have constituted just compensation to Sohal. "The trier of fact in an eminent domain action is not

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[4] Sohal does not contend the trial court erred in disallowing him from testifying as to the value of the prune-farming business.

an appraiser, and does not make a determination of market value based on its opinion thereof. Instead it determines the market value of the property, based on the opinions of the valuation witnesses." (*Aetna*, *supra*, 170 Cal.App.3d at p. 877.)

Sohal repudiates any entitlement to loss of business goodwill for his farming *business* because he seeks to characterize his lost profits as part of the value of his interest in the *real property*. Thus, Sohal rejects the applicability of section 1263.510[5] by asserting that he is not entitled to compensation for lost profits because he "doesn't meet the 'customer patronage' predicate for goodwill." Sohal urges us to conclude that lost *profits* from the prune-farming business *must* be part of his property interest. Relying on the constitutionally guaranteed right to compensation for a governmental taking of *real property*, he argues that the trial court failed to award him the sort of just compensation espoused by the High Court in *Miller*, *supra*, 317 U.S. 369 [87 L.Ed. 336]. Not so.

Miller does declare that the Fifth Amendment guarantees the right to just compensation for a governmental taking. (317 U.S. at p. 373 [at p. 342].) However, as we have already noted, courts have long held that there exists no constitutional right to compensation for loss of business goodwill. (*Attisha*, *supra*, 128 Cal.App.4th at p. 367, fn. 4; *Community Redevelopment Agency*

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[5] See footnote 3, *ante*, setting forth section 1263.510.

v. Abrams (1975) 15 Cal.3d 813, 831-832, superseded by statute on other grounds as stated in *Chhour v. Community Redevelopment Agency* (1996) 46 Cal.App.4th 273, 278.) *Miller* does not hold to the contrary. In short, the right to compensation for loss of business goodwill is statutory only, and Sohal has not complied with the statute governing claims to such compensation. (§ 1263.510.)

Sohal attempts to redefine constitutionally compelled "just compensation" to include lost farming profits by relying on *People ex rel. Dept. of Pub. Works v. Lynbar* (1967) 253 Cal.App.2d 870 (*Lynbar*). *Lynbar* does not support Sohal's argument. In *Lynbar*, the state condemned real property that was subject to a lease with terms very favorable to the landowner. (*Id.* at p. 873.) On appeal, the state argued that the favorable lease should not be credited to the landowner but should simply be ignored. (*Id.* at pp. 874-875.) The *Lynbar* court held that just compensation could not be premised on the fiction that the value of the property to the lessor was unaffected by a lease. (*Id.* at p. 881.) In so holding, the *Lynbar* court noted that the value of the leasehold would certainly be something that any buyer would consider in calculating the value of the property. (*Ibid.*)

Here, Sohal *did* receive his share of the interest in the property deriving from a favorable lease in the form of bonus value. *Lynbar* does not hold that lost business goodwill is subject to the *constitutional* guarantee of just compensation for a governmental taking. (See *Lynbar, supra*, 253 Cal.App.2d at

p. 878 [noting that "[t]he question before us, in our view, is purely one of statutory construction"].) Loss of business goodwill is statutorily compensable, and – as we have explained – Sohal failed to comply with the statutorily mandated procedure for establishing entitlement to business goodwill.

DISPOSITION

The judgment is affirmed. Respondents, the Department of Transportation and the Darrel and Jane Smith Family Partnership, shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2), and (5).)

BLEASE , Acting P. J.

We concur:

NICHOLSON, J.

ROBIE, J.